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|------------------------------|---|---|
| THOMAS LLOYD D'AQUIN,        | ) |   |
|                              | ) |   |
| Plaintiff                    | ) |   |
|                              | ) |   |
| v.                           | ) | Case No.:                                   |
|                              | ) |   |
| NCO FINANCIAL SYSTEMS, INC., | ) | <b>COMPLAINT AND DEMAND FOR</b>             |
|                              | ) | <b>JURY TRIAL</b>                           |
| Defendant                    | ) |   |
|                              | ) | <b>(Unlawful Debt Collection Practices)</b> |

THOMAS LLOYD D'AQUIN ("Plaintiff"), by his attorneys, KIMMEL & SILVERMAN, P.C., alleges the following against NCO FINANCIAL SYSTEMS, INC. ("Defendant");

1. Plaintiff's Complaint is based on the Fair Debt Collection Practices Act, 15 U.S.C. § 1692 *et seq.* ("FDCPA") which prohibits debt collectors from engaging in abusive, deceptive, and unfair practices and the Telephone Consumer Protection Act, 47 U.S.C. § 227 *et seq.* ("TCPA").

2. Jurisdiction of this court arises pursuant to 15 U.S.C. § 1692k(d), which states that such actions may be brought and heard before “any appropriate United States district court

1 without regard to the amount in controversy,” and 28 U.S.C. § 1331 grants this court original  
2 jurisdiction of all civil actions arising under the laws of the United States.

3 3. Defendant conducts business and has an office in the Commonwealth of  
4 Pennsylvania and therefore, personal jurisdiction is established.

5 4. Venue is proper pursuant to 28 U.S.C. § 1391(b)(1).

6 5. Declaratory relief is available pursuant to 28 U.S.C. §§ 2201 and 2202.  
7

### 8 9 **PARTIES**

10 6. Plaintiff is a natural person residing in Biloxi, Mississippi, 39530.

11 7. Plaintiff is a “consumer” as that term is defined by 15 U.S.C. § 1692a(3).

12 8. Defendant is a national debt collection company with corporate headquarters  
13 located at 507 Prudential Road in Horsham, Pennsylvania, 19044.

14 9. Defendant is a “debt collector” as that term is defined by 15 U.S.C. § 1692a(6),  
15 and repeatedly contacted Plaintiff in an attempt to collect a debt.

16 10. Defendant acted through its agents, employees, officers, members, directors,  
17 heirs, successors, assigns, principals, trustees, sureties, subrogees, representatives, and insurers.  
18

### 19 **PRELIMINARY STATEMENT**

20 11. The Fair Debt Collection Practices Act (“FDCPA”) is a comprehensive statute,  
21 which prohibits a catalog of activities in connection with the collection of debts by third parties.  
22 See 15 U.S.C. § 1692 *et seq.* The FDCPA imposes civil liability on any person or entity that  
23 violates its provisions, and establishes general standards of debt collector conduct, defines abuse,  
24 and provides for specific consumer rights. 15 U.S.C. § 1692k. The operative provisions of the  
25

1 FDCPA declare certain rights to be provided to or claimed by debtors, forbid deceitful and  
2 misleading practices, prohibit harassing and abusive tactics, and proscribe unfair or  
3 unconscionable conduct, both generally and in a specific list of disapproved practices.

4       12. In particular, the FDCPA broadly enumerates several practices considered  
5 contrary to its stated purpose, and forbids debt collectors from taking such action. The  
6 substantive heart of the FDCPA lies in three broad prohibitions. First, a “debt collector may not  
7 engage in any conduct the natural consequence of which is to harass, oppress, or abuse any  
8 person in connection with the collection of a debt.” 15 U.S.C. § 1692d. Second, a “debt  
9 collector may not use any false, deceptive, or misleading representation or means in connection  
10 with the collection of any debt.” 15 U.S.C. § 1692e. And third, a “debt collector may not use  
11 unfair or unconscionable means to collect or attempt to collect any debt.” 15 U.S.C. § 1692f.  
12 The FDCPA is designed to protect consumers from unscrupulous collectors, whether or not there  
13 exists a valid debt, broadly prohibits unfair or unconscionable collection methods, conduct which  
14 harasses, oppresses or abuses any debtor, and any false, deceptive or misleading statements in  
15 connection with the collection of a debt.  
16

17       13. In enacting the FDCPA, the United States Congress found that “[t]here is  
18 abundant evidence of the use of abusive, deceptive, and unfair debt collection practices by many  
19 debt collectors,” which “contribute to the number of personal bankruptcies, to marital instability,  
20 to the loss of jobs, and to invasions of individual privacy.” 15 U.S.C. § 1692a. Congress  
21 additionally found existing laws and procedures for redressing debt collection injuries to be  
22 inadequate to protect consumers. 15 U.S.C. § 1692b.  
23

24       14. Congress enacted the FDCPA to regulate the collection of consumer debts by debt  
25 collectors. The express purposes of the FDCPA are to “eliminate abusive debt collection

1 practices by debt collectors, to insure that debt collectors who refrain from using abusive debt  
2 collection practices are not competitively disadvantaged, and to promote consistent State action  
3 to protect consumers against debt collection abuses.” 15 U.S.C. § 1692e.  
4

5  
6 **FACTUAL ALLEGATIONS**

7 15. At all relevant times, Defendant was attempting to collect an alleged consumer  
8 debt from Plaintiff.

9 16. The alleged debt at issue arose out of transactions, which were primarily for  
10 personal, family, or household purposes.

11 17. Beginning in or around June 2010 and continuing until March 31, 2011,  
12 Defendant, its agents, employees, and servants, engaged in debt collection activities seeking  
13 payment from Plaintiff.

14 18. Defendant, its employees and servants harassed Plaintiff by making continuous  
15 calls to his home telephone number and work cellular telephone number.

16 19. Defendant placed repeated calls to Plaintiff's telephone almost every day, causing  
17 Plaintiff to receive, at times, more than two (2) collection calls a day and at times, more than  
18 four (4) collection calls a day.

19 20. Defendant placed repeated calls to Plaintiff's telephone almost every day, causing  
20 Plaintiff to receive, at times, more than ten (10) collection calls a week and at times, more than  
21 twenty (20) collection calls a month.

22 21. On one occasion in September 2010 or October 2010, Defendant contacted  
23 Plaintiff after 9:00 o'clock at night.

24 22. Defendant has left messages on Plaintiff's answering machine indicating that it  
25

1 was an "important call" and Plaintiff "needed to call back."

2       23. However, when Plaintiff tried to return Defendant's "important calls", Defendant  
3 failed to answer the telephone.

4       24. In or around the time of Defendant's first contact, Plaintiff sent a letter to  
5 Defendant demanding that the telephone calls cease and desist; specifically Plaintiff requested  
6 the telephone calls to his cellular telephone cease, as the cellular telephone belonged to his  
7 company and was not Plaintiff's personal cellular telephone.

8       25. Further, Plaintiff advised Defendant during each telephone call that his cellular  
9 telephone was for business use only, belonged to his employer, and was not to be called by  
10 Defendant.

11       26. Despite receiving Plaintiff's correspondence and verbal requests, Defendant  
12 continued to contact Plaintiff on his business cellular telephone.

13       27. During one conversation where Plaintiff again demanded Defendant cease further  
14 contact, Plaintiff was told: "you should learn how to pay your mother f--king bill."

15       28. Upon information and belief, Defendant used an automated telephone dialing  
16 system or pre-recorded or artificial voice, when contacting Plaintiff on his work cellular  
17 telephone.

18       29. Plaintiff did not expressly consent to Defendant's placement of telephone calls to  
19 his work cellular telephone by the use of an automatic telephone dialing system or pre-recorded  
20 or artificial voice prior to Defendant's placement of the calls.

21       30. Upon information and belief, none of Defendant's telephone calls placed to  
22 Plaintiff were for "emergency purposes," as specified in 47 U.S.C. §227(b)(1)(A).

23       31. In December 2010, Defendant called Plaintiff to notify him that it would be filing  
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25

1 paperwork with the Court the following day as payment was not made.

2 32. In January 2011, Defendant called plaintiff to verify information because it was  
3 filing a lawsuit against him.

4 33. To date, despite threats and representations to the contrary, Defendant has not  
5 filed a lawsuit or taken other legal action against Plaintiff, thereby indicating it did not take nor  
6 did it intend to take the action previously threatened.

7 34. Defendant's actions in attempting to collect the alleged debt were harassing,  
8 abusive and highly deceptive.  
9

#### 10 CONSTRUCTION OF APPLICABLE LAW

11 35. The FDCPA is a strict liability statute. Taylor v. Perrin, Landry, deLaunay &  
12 Durand, 103 F.3d 1232 (5th Cir. 1997). "Because the Act imposes strict liability, a consumer  
13 need not show intentional conduct by the debt collector to be entitled to damages." Russell v.  
14 Equifax A.R.S., 74 F. 3d 30 (2d Cir. 1996); see also Gearing v. Check Brokerage Corp., 233  
15 F.3d 469 (7th Cir. 2000) (holding unintentional misrepresentation of debt collector's legal status  
16 violated FDCPA); Clomon v. Jackson, 988 F. 2d 1314 (2d Cir. 1993).

17 36. The FDCPA is a remedial statute, and therefore must be construed liberally in  
18 favor of the debtor. Sprinkle v. SB&C Ltd., 472 F. Supp. 2d 1235 (W.D. Wash. 2006). The  
19 remedial nature of the FDCPA requires that courts interpret it liberally. Clark v. Capital Credit  
20 & Collection Services, Inc., 460 F. 3d 1162 (9th Cir. 2006). "Because the FDCPA, like the  
21 Truth in Lending Act (TILA) 15 U.S.C §1601 *et seq.*, is a remedial statute, it should be  
22 construed liberally in favor of the consumer." Johnson v. Riddle, 305 F. 3d 1107 (10th Cir.  
23 2002).  
24  
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37. The FDCPA is to be interpreted in accordance with the “least sophisticated” consumer standard. See Jeter v. Credit Bureau, Inc., 760 F.2d 1168 (11th Cir. 1985); Graziano v. Harrison, 950 F. 2d 107 (3<sup>rd</sup> Cir. 1991); Swanson v. Southern Oregon Credit Service, Inc., 869 F.2d 1222 (9th Cir. 1988). The FDCPA was not “made for the protection of experts, but for the public - that vast multitude which includes the ignorant, the unthinking, and the credulous, and the fact that a false statement may be obviously false to those who are trained and experienced does not change its character, nor take away its power to deceive others less experienced.” Id. The least sophisticated consumer standard serves a dual purpose in that it ensures protection of all consumers, even naive and trusting, against deceptive collection practices, and protects collectors against liability for bizarre or idiosyncratic interpretations of collection notices. Clomon, 988 F. 2d at 1318.

**COUNT I**  
**DEFENDANT VIOLATED**  
**THE FAIR DEBT COLLECTION PRACTICES ACT**

38. In its actions to collect a disputed debt, Defendant violated the FDCPA in one or more of the following ways:

- a. Defendant violated the FDCPA generally;
- b. Defendant violated § 1692c(a)(1) of the FDCPA when it contacted the Plaintiff at an unusual time or place or a time and place known or should be known to be inconvenient to the Plaintiff in connection with the collection of a debt; specifically in the absence of knowledge of circumstances to the contrary, a debt collector shall assume that the convenient time for communicating with a consumer is after 8 o'clock antemeridian and before 9

- 1 o'clock postmeridian, local time at the consumer's location;
- 2 c. Defendant violated § 1692d of the FDCPA by harassing Plaintiff in
- 3 connection with the collection of an alleged debt;
- 4 d. Defendant violated § 1692d(2) of the FDCPA by using obscene or profane
- 5 language or language the natural consequence of which is to abuse the hearer
- 6 or reader;
- 7 e. Defendant violated § 1692d(5) of the FDCPA, when it caused the Plaintiff's
- 8 telephone to ring repeatedly or continuously with the intent to harass, annoy
- 9 or abuse Plaintiff;
- 10 f. Defendant violated § 1692e of the FDCPA by using false, deceptive, or
- 11 misleading representations or means in connection with the collection of a
- 12 debt;
- 13 g. Defendant violated § 1692e(5) of the FDCPA by threatening to take action
- 14 that cannot legally be taken or that is not intended to be taken;
- 15 h. Defendant violated § 1692e(10) of the FDCPA by using false representations
- 16 or deceptive means to collect or attempt to collect a debt;
- 17 i. Defendant violated § 1692f of the FDCPA by using unfair and
- 18 unconscionable means with Plaintiff to collect or attempt to collect a debt;
- 19 j. Defendant acted in an otherwise deceptive, unfair and unconscionable manner
- 20 and failed to comply with the FDCPA.
- 21
- 22
- 23

24 WHEREFORE, Plaintiff, THOMAS LLOYD D'AQUIN, respectfully prays for a

25 judgment as follows:



- a. All actual compensatory damages suffered pursuant to 15 U.S.C. § 1692k(a)(1);
- b. Statutory damages of \$1,000.00 for the violation of the FDCPA pursuant to 15 U.S.C. § 1692k(a)(2)(A);
- c. All reasonable attorneys' fees, witness fees, court costs and other litigation costs incurred by Plaintiff pursuant to 15 U.S.C. § 1693k(a)(3); and
- d. Any other relief deemed appropriate by this Honorable Court.

**DEMAND FOR JURY TRIAL**

PLEASE TAKE NOTICE that Plaintiff, THOMAS LLOYD D'AQUIN, demands a jury trial in this case.

DATED: 06/17/11

RESPECTFULLY SUBMITTED,

KIMMEL & SILVERMAN, P.C.

By: 

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